

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-2043

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

To be argued by
DAVID J. GOTTLIEB

-----X
ROOSEVELT C. BENTLEY,

Appellant,

-against-

ROBERT J. HENDERSON, Superintendent,

Appellee.
-----X

Docket Number 76-2043

APPENDIX FOR APPELLANT
ROOSEVELT BENTLEY

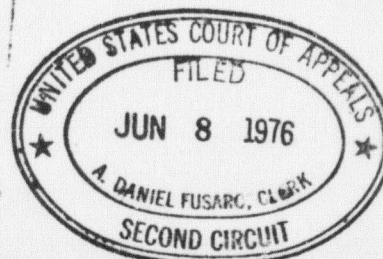
ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.
THE LEGAL AID SOCIETY,
Attorney for Appellant
ROOSEVELT BENTLEY

FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

DAVID J. GOTTLIEB

OF Counsel.



PAGINATION AS IN ORIGINAL COPY

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE MOTLEY

73 CH. 1801

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

U.S.A. EX REL. ROOSEVELT C. BENTLEY

For plaintiff:

AGAINST

ROOSEVELT C. BENTLEY
135 State Street
Auburn, N.Y.

ROBERT J. HENDERSON, SUPER INTENDENT,
AUBURN CORRECTIONAL FACILITY, AUBURN,
NEW YORK

For defendant:

Louis J. Lefkowitz
Attorney General
State of New York
Attn: Iris A. Steel
80 Centre Street
New York, N.Y. 10013

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed x

Clerk

J.S. 6 mailed ✓

Marshal

Basis of Action: HABEAS CORPUS

Docket fee

Witness fees

Action arose at:

Depositions

DATE	PROCEEDINGS	Date Order of Judgment Not
April 24-73	Filed petition for Writ of Habeas Corpus.	
4-24-73	Filed order permitting the pl'tff to proceed in forma pauperis without prepayment of fees. Palmieri, J.	
May 14-73	Filed Order that time for respondent to answer the petition is extended until May 31, 1973. (mn) Ryan, J.	
Jun 4-73	Filed Order that time for respondent to answer the petition is extended until June 8, 1973; Final extension. Cannella, J. (mn)	
Jun 8-73	Filed affidavit of Iris A. Steel in opposition to petitioner's application for a writ of habeas corpus.	
Jun 22-73	Filed Petitioner's reply affidavit (traverse).	
Jun 22-73	Filed Notice of Assignment to JUDGE MOTLEY.	
Jun. 26-73	Filed Relator's affidavit & notice of motion for a sua sponte order, & a temporary restraining order ret. before Motley, J.	
Nov. 20-73	Filed Order- petitioner having been granted permission to proceed in forma pauperis (T) by order dated 4-23-73, the court appoints Graham Hughes, Esq. to represent the petitioner. So ordered- MOTLEY, J.	
May 21-75	Mailed original CJA 20 copy 1 to A.O., Washington, D.C. for payment. MOTLEY, J.	
May 30-75	Filed affdvt. of Kenneth P. Harty, Psychologist in support of respondent.	
May 30-75	Filed respondent's memorandum in opposition to petitioner's writ of H/C (T)	
Jan. 28-76	✓ Filed Memorandum-Opinion # 43801 and Order-- for the reasons stated, the petition for writ of habeas corpus must be denied. Petition denied. So ordered- MOTLEY, J. (m/n by Pro Se)	
01-29-76	Filed Order of discontinuance. MOTLEY, J. (m/n by Pro Se) (T)	
02-07-76	Filed petitioner's notice of appeal from decision and order dismissing petition for writ of habeas corpus dated Jan. 28-76. Pro Se Clerk mailed notices to: Petitioner, Atto General of New York, and Warden of N.Y.C. HOUSE OF DETENTION FOR MEN.	

RAYMOND P. ...

[Signature]

Deputy Clerk

MOTLEY, J

✓ ORIG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA ex rel.
ROOSEVELT C. BENTLEY,

Petitioner,

-against-

HON. R. J. HENDERSON, Superintendent
Auburn Correctional Facility,
Auburn, New York,

Respondent.

-----x

APPEARANCES

GRAHAM HUGHES
New York University
School of Law
40 Washington Square South
New York, New York 10012

Attorney for Petitioner

#43801

73 CIV. 1801

U.S. DISTRICT COURT
JAN 20 4 42 PM '76
S.D.N.Y.

(W.C.)

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JAN 20 1976

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HON. LOUIS J. LEFKOWITZ
Attorney General, States of New York
By: David R. Spiegel
Asst. Atty. Gen.
Two World Trade Center
New York, New York 10047

Attorneys for Respondent

CONSTANCE BAKER MOTLEY, D. J.

Memorandum Opinion and Order

This is a petition for a writ of habeas corpus, 28 U.S.C. § 2254, originally filed pro se by petitioner, a prisoner in respondent's custody in April 1973. Counsel was subsequently appointed by the court for petitioner.

Petitioner seeks to have this court set aside a 1970 conviction in the New York State Supreme Court, Bronx County, entered upon his plea of guilty to 1) possession of a weapon and 2) criminal possession of a dangerous drug. He was sentenced to an indeterminate term of up to seven years on each charge, with both terms to run concurrently. His conviction was affirmed on appeal to the Appellate Division and leave to appeal to the Court of Appeals was denied. ^{1/}

Thereafter in a coram nobis proceeding in the state court he claimed that at the time of entry of his pleas of guilty he was not mentally competent. His petition for a writ of coram nobis was denied by the Bronx Supreme Court on August 4, 1972.

The basis of petitioner's claim in the state court and here is a report, in letter form, dated March 2, 1971 made by Dr. Stanley L. Portnow, a psychiatrist at Bellevue Hospital Center, and addressed to Mrs. Gussie Kleinman, 457 Fifth Avenue, New York, New York 10016, an attorney who was apparently representing petitioner at the time. Dr. Portnow's letter report states that petitioner was examined on February 18, 1971 at the Federal House of Detention as a result of Mrs. Kleinman's request and a court order. The report concluded that petitioner is "a man who clinically is suffering from a moderate degree of mental retardation." The report further concluded that petitioner is "barely literate, very suggestible and child-like in his responses to people whom he trust [sic] and likes." Finally, the report stated, "Psychological tests should be performed to determine the patient's intelligence quotient."

In opposition to the instant petition respondent has submitted the affidavit of Kenneth P. Harty, a trained psychologist who examined petitioner with respect to his intelligence quotient after his incarceration at Ossining Correctional Facility on June 29, 1970 and found it to be a composite quotient of 74, indicating that petitioner is a borderline defective. According to Mr. Harty this indicates a level of intellectual functioning above that of a retarded person, retardation being a score of 69 or under.

A review of the transcript of the plea hearing discloses that at the time of petitioner's pleas there was no request by counsel for an examination. There is also no evidence of incompetence on the part of petitioner in responding to questions.

On November 20, 1974, after petitioner's pro se petition had been filed in this court and after respondent had filed a reply and after the court had received two reports from Magistrate Goettel (one dated 1/7/74 and a second dated 2/20/74), the undersigned appointed Graham Hughes, Esq. to represent petitioner. On January 23, 1975, Mr. Hughes filed an able brief on behalf of petitioner and advised the court that he had been unable to locate petitioner. The respondent filed a

reply brief on May 30, 1975 along with the affidavit of Kenneth P. Harty.

Thereafter, on October 1, 1975 the court received a letter from petitioner indicating that he is presently incarcerated on Rikers Island, having been detained on a state and federal warrant upon being paroled on December 20, 1973 from his state court concurrent sentences. Petitioner pleaded guilty to a federal charge before Chief Judge Edelstein of this Court on May 16, 1972. He was sentenced to six months imprisonment with the recommendation that his federal sentence be served concurrently with his state court sentence. However, it appears from petitioner's letter of September 29, 1975, received October 1, 1975, that petitioner was first taken into state custody and then federal custody. According to his letter, petitioner was rearrested April 13, 1975 and is presently being detained on a violation of parole warrant.

After filing his pro se petition for a writ of habeas corpus in this court on April 10, 1973, petitioner filed what he styled "Affidavit in Support of Cross-Motion and in Opposition To 'Affidavit In Opposition' Interposed by Attorney General Louis J. Lefkowitz In Contempt of Hon. John M. Cannella's June 4, 1973 Order."

Judge Cannella of this Court had extended respondent's time to submit an answering affidavit up to and including June 8, 1973. The opposing affidavit was filed on that date.

The remainder of the Cross-Motion sought to raise a new issue not raised in the state court coram nobis proceeding. The new issue sought to be raised was whether the state court judge who sentenced petitioner failed to adhere to a sentence proposal reached during the course of a plea bargain, citing Santabello v. New York, 404 U. S. 257 (1971). Since that issue was not presented to the state court, petitioner is precluded from presenting that issue here until he has exhausted his state remedies as to that issue. 28 U.S.C. § 2254 (b). However, it should be noted that petitioner was asked by the judge who took his plea whether any bargain other than the one put on the record at that time had been entered into by petitioner. In the presence of his counsel, petitioner replied no. The bargain put on the record was that petitioner was to receive two concurrent indeterminate sentences of up to seven years on each indictment. The first indictment charged unlawful possession of a weapon in the first count. The second indictment charged criminal possession of a dangerous drug.

Petitioner's claim that his state court conviction should be set aside because he was not mentally competent at the time of his plea is without merit. There is no evidence that petitioner was ever in a mental institution either before or after his plea. He was represented by counsel at the time of his plea. No request for an examination was made. A review of the transcript revealed no indication of an inability on petitioner's part to respond to questions put to him by the judge who took the plea. Petitioner never raised the question until after Dr. Portnow's report which was about a year after sentence. The affidavit of Kenneth P. Harty pointing out that petitioner was examined on June 29, 1970, long before Dr. Portnow's report, and found to be above the retarded level is persuasive evidence that he is not retarded. Dr. Portnow's suggestion was that he be examined for the purpose of determining his I. Q. Unbeknownst to Dr. Portnow this had been done. There is therefore no basis for concluding that petitioner should have been examined at the time of his plea. U. S. ex rel. Roth v. Zelker, 455 F.2d 1105, 1108 (2d Cir. 1972, cert. den. 408 U. S. 927 (1972)).

Petitioner's counsel suggests that the test applicable here is the Johnson v. Zerbst, 304 U. S. 458, 465 (1938) standard. Applying that standard, the minutes of the plea

disclose that petitioner knowingly and intelligently waived his right to trial. He responded without hesitation to all questions put to him by the court, including the question, "What kind of pistol or revolver was it?", to which petitioner replied: "38". He was represented by counsel. There is no suggestion that his counsel was not competent. What appears, as the respondent argues, is that in view of petitioner's long criminal record, he was pleading guilty with the advice of counsel and looking for the best bargain that he could arrange in view of that fact. Cf. North Carolina v. Alford, 400 U. S. 25 (1970). Just prior to accepting the plea on the weapons charge, the judge who took the plea had heard and denied petitioner's motion to suppress the weapons seized from petitioner at the time of his arrest on a traffic violation. The court was therefore aware of the strength of the state's case against petitioner.

Again, there is simply no evidence that petitioner was mentally incompetent at the time of his plea or did not know what he was doing at the time he entered his plea.

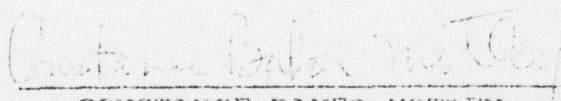
For all of the foregoing reasons, the petition for writ of habeas corpus must be denied.

Petition Denied.

Dated: New York, New York

SO ORDERED

January 28, 1976


CONSTANCE BAKER MOTLEY
U. S. D. J.

FOOTNOTES

1. People v. Bentley, 38 A.D.2d 690
(1st Dept.) 1971. Leave to appeal
denied August 7, 1972.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
ex rel., ROOSEVELT C. BENTLEY,

PETITIONER,

APPLICATION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 2241-2254
28 U.S.C.

- vs -

ROBERT J. HUNT, SR., SUPERINTENDANT,
AUBURN CORRECTIONAL FACILITY
AUBURN, NEW YORK,
RESPONDENT.

STATE of NEW YORK) ss:
COUNTY OF CAYUGA)

Sir:

Please take notice that, the petitioner, Roosevelt C. Bentley, respectfully moves this court for the issuances of a writ of Habeas Corpus Pursuant to Section 2241-2254 of Title 28 U.S.C.

STATEMENT OF FACTS:

The defendant was indicted for the crimes of criminal possession of a weapon as a felony, and criminal possession of a dangerous drug, 1st degree, by Bronx County Supreme Court. (Ind. nos. 2725/69 & 3057/69).

The defendant pleaded guilty on April 1st, 1970, to the crimes of criminal possession of a weapon, as a felony (Ind. # 2725/69), and criminal possession of a dangerous drug, 3rd degree (Ind. #3057/69), to cover both indictments in Supreme Court, Bronx County.

On April 24, 1970, petitioner was sentenced to terms of imprisonment at Ossining Correctional Facility for seven (7) years to run concurrently on each count, in Supreme Court, Bronx County.

The petitioner is currently serving said sentence and is incarcerated at Auburn Correctional Facility, Auburn, New York.

STATEMENT OF EXHAUSTION
of STATE COURT REMEDIES

The petitioner exhausted his State Court remedies as follows in connection with the same question:

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1. On July 14, 1972, petitioner applied for a post-Conviction proceeding in the nature of "Motion to vacate Judgements of Convictions" (Sec. 440.10 C.P.L.) in Bronx County Supreme Court, on the grounds that his judgments of convictions are unconstitutional in violation of the due process and equal protection clauses of the 14th amendment insofar as his pleas of guilty were involuntarily and unintelligently entered due to the petitioner's mentally defective state of mind at the time of entry to the guilty plea.

2. On August 4th, 1972, the Supreme Court, Bronx County denied the application for Post-Conviction proceedings, without a hearing.

3. The petitioner applied to the Supreme Court, Appellate Division, 1st dept., for leave to appeal from the order above, and for assignment of counsel.

4. On October 31, 1972, permission to appeal to the Appellate Division was summarily denied by Justice McNelly Associate Justice of the Appellate Division, 1st dept.

5. On November 17th, 1972, petitioner applied for leave of appeal to the N.Y. State Court of Appeals from order of the above Appellate Division, denying leave to appeal by order dated October 31, 1972.

6. On November 22, 1972, clerk of the Court of Appeals advised the petitioner in letter form that no appeal lies to the Court of Appeals from order of the Appellate Division denying leave to appeal.

leave

7. No petition for Writ of Certiorari was sought in the U.S. Supreme Court.

Therefore, the petitioner has fully exhausted his available State Court remedies and Federal Habeas Corpus is now available in the U.S. District Court for relief. See (Sec. 2254, 28 U.S.C.)

CONTENTIONS

It is contended by the petitioner that he was mentally incompetent and defective at the time he pleaded guilty to the crimes of criminal possession of a weapon and dangerous drug, 3rd degree, and could not intelligently enter a voluntary plea of guilty to these felonies with the full understanding and consequences of his act.

Therefore, The petitioner's plea of guilty was not intelligently and knowingly entered and the convictions are unconstitutional to substantiate the petitioner's contentions.

The petitioner cites from a psychiatric report, dated, March 2nd, 1971, taken on February 18th, 1971, at the Federal House of Detention, at West Street, New York City upon direction Hon. Constance B. Motley of Judge of the Southern District Court in connection with an unrelated Federal charge, subsequently to the State Court Prosecution:

Page 1:

"The patient is barely literate. One must conclude that his judgement is greatly impaired."

Page two:

"Beside exhibiting impairment of judgement, his thinking is also overly concrete. With regard to the plea which the patient took, he says:

My lawyer knew what was going on, and he advised me. He told me to forget about the narcotic charge and cop out to the gun charge".

The report stated at pg. 2 the following:

"In view of this, he does not understand why he was sentenced on the narcotics charge. When asked why he gave away his right to a trial, he states:

"Because I trusted my lawyer."

The report concluded:

"The picture presented is one of a man who clinically is suffering a degree of mental retardation. He is barely literate, very suggestible and childlike in his responses to people, whom he trusts and likes. Psychological test should be performed to determine the patient's intelligence quotient."

"Dr. Stanley L. Portnow, M.D.
F.A.P.A. Chief
Forensic Psychiatry
Bellevue Hospital
Medical Center

Therefore, it appears from the aforementioned psychiatry report of March 2nd, 1971, attached as exhibit (A), for the petitioner, that he was in a state of mental retardation, thus mentally incompetent to intelligently and knowingly enter a voluntary plea of guilty to the crimes as matter of law.

The report indicates that the petitioner didn't know why he was being sentenced on the drug charge. The petitioner didn't even remember pleading guilty to the narcotics charge, and could not understand why he was being sentenced.

This in itself, indicates that the petitioner did not knowingly plead guilty. Furthermore, the Hon. Stanley L. Portnoy, U.D. recommended that the petitioner be further examined to determine his intelligence quotient.

This recommendation cast doubt on the petitioner's intelligibility to enter a voluntary plea of guilty in the State prosecution.

The report states affirmatively that the petitioner's was suffering from "A mentally gross judgement and impairment."

This fact casts doubt on the voluntariness of his pleas of guilty.

As the report indicates, the petitioner alleges that he pleaded guilty to both crimes because his attorney advised him to do so, whom he trusted totally, and not intelligently, knowingly, and with the full consequences thereof.

In fact, petitioner pleaded guilty under the impression that he plead guilty only to the sup charge.

In view of his psychiatrist evaluation of the petitioner on March 2nd, 1971, which occurred following the conclusion of the criminal prosecution in Bronx Supreme Court on April 24, 1970, and further recommendation for examination to determine the petitioner's intelligence quotient, the petitioner contends that he did not intelligently, knowingly, and voluntarily enter his plea of guilty as a matter of law. See (exhibit A).

The foregoing casts serious doubt on the validity of the proceedings held in the Supreme Court, Bronx County, on April 1, 1970, when the petitioner's plea of guilty was entered.

No further psychiatric examinations were conducted in the case.

No psychiatric examination, or observances were ordered by the Supreme Court, Bronx County, nor actually conducted in connection with the cases to determine the petitioner's competency to understand the charges against him and to adequately assist counsel in preparation of his defenses. See (Sec. 658, former C.C.P.).

See, People v. Boundy, 225 N.Y. 2D 207; also, See, People v. Koehl, 23 A.D. 2D 690, 257 N.Y.S. 2D 615; People v. Esau Furtick (N.Y.L.J. - 7/7/72, p. 11, Coly 7).

No factual or evidentiary hearing was ever conducted by the Supreme Court, Bronx County, on the allegations of the petitioner's application, contrary to the law. See, (above cited authorities.)

Therefore, a evidentiary hearing is required in this court on the petitioner's allegations, since no hearing was held in the State Courts; and the allegations are not false, subject to disbelief, and would require relief by the court if established at a hearing. See, Townsend v. Sain, 379 U.S. 293, 311, 312, 83 Sup. Ct. 745, 756, 9 L.Ed. 2d 770 (1963).

Therefore, the petitioner was deprived of his constitutional and fundamental rights to due process of law and equal protection under the 14th Amendment of the U.S. Constitution, and his detention is unconstitutional and must be set aside in the interest of justice. See, Pate v. Robinson, 383 U.S. 377, 86 S. Ct. 836, at p. 838 (1966).

In Bishop vs. U.S. 350 U.S. 961, 76 Sup. Ct. 440, 100 L. Ed. 835, the court held the conviction of an accused person while he is legally incompetent violates due process of law. The State Procedures must be adequate to protect this right.

CONCLUSION

WHEREFORE, the application should be granted, and the writ of Habeas Corpus issued, directing the petitioner release from custody forthwith?

A evidentiary hearing should be ordered on the petition or application before this court, and counsel assigned to the petitioner on this application as a matter of law. See (Sec. 3006 18 U.S.C.)?

RESPECTFULLY SUBMITTED

Russell C. Berthel X
Petitioner Pro Se
135 State Street
Auburn, New York

Sworn to before me

this 12 day of April 1973

Leonard A. Green
NOTARY PUBLIC

LEONARD A. GREEN
Notary Public, State of New York
Qualifies in Cayuga County
April 11, 1973

BEST COPY AVAILABLE

STATE OF NEW YORK) SS:
COUNTY OF CAYUGA)

AFFIDAVIT OF MAILING

ROOSEVELT C. BENTLEY, being duly sworn and says:
that he placed two copies of the annexed application
and exhibit in the hands of the duly authorized Notary
Public at 135 State Street, Auburn, New York, to be mailed
at U.S. mail.

TO:

Hon. Judge Constance B. Motley
U.S. District Court
Southern District of N.Y.
New York, New York

TO:

Attorney General Office
80 Centre Street
New York, New York

Sworn to before me

this day of *12 Sept* 1973

James H. Gurne
NOTARY PUBLIC

Respectfully submitted

Roosevelt C. Bentley X
135 State Street
Auburn New York

RECORDED & INDEXED
Notary Public, State of New York
Qualified in Cayuga County, 1964
Commission Expires March 30, 1984

STATE OF NEW YORK) ss:
COUNTY OF CAYUGA)

AFFIDAVIT IN FORMA PAUPERIS

I, ROOSEVELT C. BENTLEY, being duly sworn, deposes and says: That he submits this affidavit in support of his motion for leave to proceed in Forma Pauperis and alleges the following:

1. He is without funds to pay the costs, fees, and expenses of this proceeding, and request leave to proceed in Forma Pauperis and for the appointment of counsel to represent him in connection with the annexed application for a writ of habeas corpus as a state prisoner, within the meaning of Statute (Sec. 1915, 28 U.S.C. Sec. 3006 (A))

In all respect, the motion should be granted?
Submitted in good faith.

Sworn to before me

this 12 day of April 1973

Leonard R. Green
Notary Public

Respectfully Submitted

Roosevelt C. Bentley X
Petitioner Pro Se
135 State Street
Auburn, New York

LEONARD R. GREEN
Notary Public, State of New York
Qualified in Cayuga County 1964
Commission Expires March 22, 1974

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Indictment Nos. 2725/69
3957/69

SUPREME COURT - BRONX COUNTY

----- X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

ROOSEVELT C. BENTLEY,

Defendant.
----- X

PLEA

Part XVIII
Bronx County Building
April 1, 1970

B e f o r e :

HON. JOSEPH A. BRUST,

Justice.

A p p e a r a n c e s :

for the People: BURTON B. ROBERTS, ESQ.
District Attorney, Bronx County
BY: JAMES RANDOLPH, ESQ.
Assistant District Attorney

for the Defendant: H. SIEGEL, ESQ.

o o o

Theodore Martin
Official Court Reporter

Plea

THE COURT: Mr. Randolph, what are you going to do with the Bentley case?

COURT CLERK: People against Roosevelt Clifford Bentley.

(The defendant is present at the bar with Counselor Siegal.)

MR. SIEGAL: Could we proceed, Judge?

THE COURT: Is there going to be a plea? Arraign the defendant for pleading.

COURT CLERK: Roosevelt Clifford Bentley, is that your name?

THE DEFENDANT: Yes.

MR. SIEGAL: If your Honor pleases, the defendant desires permission to withdraw his plea of not guilty heretofore entered to Indictment Number 2725 of '68 and offers to plead guilty to the crime of possession of a weapon as a felony under the first count of the indictment to cover all the counts of the indictment.

THE COURT: Is it under the first count or is it the first count?

MR. SIEGAL: Well, it is the first count to cover all the counts of the indictment.

THE COURT: And that's a Class D felony.

MR. SIEGAL: A Class D felony.

Plea

THE COURT: D like in David.

MR. SIEGAL: And the defendant further desires permission to withdraw his plea of not guilty heretofore entered and to plead guilty under Indictment Number 3057 of 1969, under the first count of the indictment, to the crime of criminal possession of a dangerous drug in the third degree to cover all the counts of the indictment.

THE COURT: That's also a Class D felony.

MR. SIEGAL: This is a Class C felony, a C felony.

THE COURT: A C felony.

COURT CLERK: Roosevelt Clifford Bentley, you are informed by direction of the Court that if you have been twice convicted of felonies, sentenced to a term of more than one year and served time on each sentence, that fact may be established and you may be sentenced as a persistent felony offender as prescribed by law; do you understand that?

THE DEFENDANT: Yes.

MR. RANDOLPH: Your Honor, the People respectfully recommend the following pleas: In reference to Indictment Number 2725 of 1969, the People respectfully recommend the acceptance of the plea of guilty to the first count of the indictment to cover

Plea

all counts contained therein, the plea of guilty being a plea of guilty to the possession of a weapon as a felony, a Class D felony.

The facts surrounding this plea of guilty are briefly as follows, your Honor: This defendant did on July 27, 1969, while in the vicinity of the Major Deegan Expressway and 233rd Street, in the County of Bronx, this defendant did knowingly and unlawfully possess a certain pistol without having a license to possess same.

In reference to Indictment Number 3057 of 1969, the People respectfully recommend the acceptance of the plea of guilty to a Class C felony, the possession of a dangerous drug in the third degree, the plea being taken under the first count of Indictment Number 3057 of 1969 to cover all counts contained in same.

The facts surrounding this indictment are briefly as follows, your Honor: This defendant did on the 24th day of September, 1969, while in his home located at 1061 East 233rd Street in the County of the Bronx, this defendant did then and there knowingly possess a certain quantity of a narcotic drug, to wit, approximately 15 and an eighth ounces of heroin in violation of the Penal Law of the State of New York.

Plea

The People respectfully recommend the acceptance of this Class C felony plea and feel under both of these pleas the Court has more than adequate scope to punish this defendant for the crimes he has pleaded guilty to.

THE COURT: Mr. Sandolph, so there won't be any misunderstanding, let the record show that before this plea was offered there was a consultation at the bench between yourself, the District Attorney himself, Mr. Roberts, and Mr. Siegal, the attorney for the defendant, whereby it was understood that ^{if} the defendant offered to plead guilty in accordance with the offers that Mr. Siegal just made and that if the District Attorney recommended acceptance and if the Court accepted both pleas, that the sentence under Indictment Number 2725/69 to cover the possession of a weapon as a Class B felony would be an indeterminate sentence which will have a maximum period of seven years and that a similar sentence would be imposed under Indictment 3057 of '69 to cover the plea to criminal possession of a dangerous drug in the third degree as a Class C felony. When I say similar sentence, also an indeterminate sentence to have a maximum term of seven years, and that said sentences

Plea

were to run concurrently and not consecutively.

MR. RANDOLPH: Your statement is absolutely correct, Judge.

THE COURT: Mr. Siegal?

MR. SIEGAL: Yes, sir; that's all right.

THE COURT: Mr. Bentley, did you hear that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, under Indictment Number 2725 of 1969, Roosevelt Clifford Bentley, is that your true name?

THE DEFENDANT: Yes, sir.

THE COURT: Did you hear your lawyer, Mr. Siegal, tell this Court that in your behalf a plea of guilty is being offered to the crime of possession of a weapon in this case, a pistol or revolver loaded with ammunition, said possession not being in your home or place of business, as a Class D felony, the first count of the indictment to cover the whole indictment; did you hear your lawyer say that?

THE DEFENDANT: Yes.

THE COURT: And have you discussed it thoroughly with him?

THE DEFENDANT: Yes.

THE COURT: Is this plea of guilty being made

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Plea

voluntarily by you, of your own free will?

THE DEFENDANT: Yes.

THE COURT: Has anyone threatened you or forced you to plead guilty?

THE DEFENDANT: No.

THE COURT: Do you understand that by offering to plead guilty you are giving up your right to a trial by jury?

THE DEFENDANT: Yes.

THE COURT: And do you admit to the fact that on July 27, 1969, in the County of Bronx, you unlawfully had in your possession a pistol or revolver loaded with ammunition?

THE DEFENDANT: Yes.

THE COURT: And it was not in your home or place of business?

THE DEFENDANT: Right.

THE COURT: What kind of pistol or revolver was it?

THE DEFENDANT: 38.

THE COURT: And it was loaded?

THE DEFENDANT: Yes.

THE COURT: And has the District Attorney or

Plea

your own lawyer, the Court or anyone else made any promise or statement as to sentence to you other than what I said a few minutes ago?

THE DEFENDANT: No, sir.

THE COURT: Upon the recommendation of the District Attorney, the Court accepts the plea of guilty of the defendant Roosevelt Clifford Bentley to the crime of possession of a weapon as a Class D felony, the first count of Indictment Number 2725 of 1969 to cover the entire indictment. Now, with reference to Indictment Number 3857 of 1969.

Mr. Bentley, did you hear your lawyer, Mr. Siegal, tell this Court that in your behalf a plea of guilty is being offered to the crime of criminal possession of a dangerous drug in the third degree under the first count of the indictment as a Class C felony to cover the entire indictment; did you hear Mr. Siegal say that?

THE DEFENDANT: Yes, sir.

THE COURT: Have you discussed this plea of guilty with him?

THE DEFENDANT: Yes.

THE COURT: Is this plea of guilty being made of your own free will, voluntarily?

Plea

THE DEFENDANT: Yes.

THE COURT: Has anyone threatened or forced you to plead guilty?

THE DEFENDANT: No.

THE COURT: And do you understand that by offering to plead guilty you are giving up your right to a trial by jury?

THE DEFENDANT: Yes.

THE COURT: And do you admit to the fact that on September 24, 1969, in Bronx County, you unlawfully had in your possession a dangerous drug, a narcotic drug, heroin; do you admit that?

THE DEFENDANT: Yes.

THE COURT: And has the District Attorney or your own lawyer, the Court or anyone else made any promise to you as to sentence other than what I have already stated?

THE DEFENDANT: No.

THE COURT: Upon the recommendation of the District Attorney, the Court accepts the plea of guilty of the defendant Roosevelt Clifford Bentley to the crime of criminal possession of a dangerous drug in the third degree, a Class C felony, under the first

Plea .

count of Indictment Number 3057 of 1969 to cover the entire indictment.

COURT CLERK: Roosevelt Clifford Bentley, do you withdraw your pleas of not guilty heretofore interposed by you and do you now plead guilty to the crime of possession of a weapon, a Class B felony, under the first count of Indictment Number 2525 of '69 and also to the crime of criminal possession of a dangerous drug in the third degree, a Class C felony under the first count of Indictment Number 3057 of '69, and those pleas are to cover those two indictments respectively; are those your pleas?

THE DEFENDANT: Yes.

COURT CLERK: Raise your right hand, please.

(Whereupon, the defendant was sworn and his pedigree taken, including the following statement: "See yellow sheet.")

THE COURT: Since I am required by law to obtain a probation report, I will put sentence down for April 24.

MR. SIEGAL: Thank you, sir.

THE COURT: Both cases.

10-2

Plea

MR. SIGAL: Could we have a minute for
Mr. Bentley to talk with his wife?

THE COURT: A few minutes just over there.

COURT CLERK: Defendant remanded, your Honor?

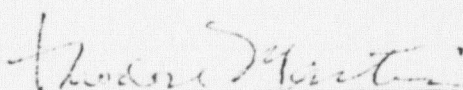
THE COURT: Yes.

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*

IT IS HEREBY CERTIFIED that the foregoing is a
true and correct transcription of the original
stenographic notes.


Official Court Reporter

Samuel L. Fortnow, M.D.
823 Park Avenue
New York, New York 10021

March 2, 1971

Mrs. Gussie Kleinman
475 Fifth Avenue
New York, New York 10016

Re: Roosevelt Clifford Bentley
Date of Birth: 12/15/30

Dear Mrs. Kleinman:

Pursuant to your request and court order, I examined Mr. Roosevelt Clifford Bentley on February 16, 1971 for one and a half hours at the Federal House of Detention of New York City.

Mr. Bentley was pleasant and cooperative during the psychiatric interview. It was somewhat difficult getting anamnestic material from the patient because of his limited intelligence. He did tell me that he was born on December 5th 1930 in Tallahassee Florida, and that both his parents are deceased of natural causes. Patient claims that there 4 boys and 4 girls born to his family and that he is next to the youngest. The patient claims that he had 3 or 4 years of schooling off and on. He can barely write his name and cannot read.

He denies any history of mental illness or any psychiatric intervention in the past. The patient alleges to have been married 3 times. He maintains that the first 2 marriages ended in divorce and that in 1958 he married his third wife, Mrs. Pamela Bentley, Old Bridge New Jersey. The patient claims to have had 4 children in his first marriage. He does not remember how many times he has been arrested in the past but does state that the charges usually centered around speeding, gambling, etc.

When asked what the date was, he responded, I know it's after the 14th of February, 1971. He was correctly oriented as to place, identifying the institution where he is presently confined as the Federal Penitentiary on West Street, N.Y.C. He knows his name and the date of his birth. He denies hearing voices but strikes me as being very cautious about what he says. There is no marked anxiety, depression or paranoid ideation. The patient is barely literate. He is aware that Rockefeller is Governor of New York State and that Lindsay is the Mayor of New York City, but he maintains that Johnson is still President of the United States.

Patient denies any history of venereal disease, narcotics abuse, but does state that he done some drinking.

One must conclude that his judgement is greatly impaired. For example when asked what he would do if found a stamped addressed envelope on the street lying near a mail box, he said "throw it in the garbage." When asked what he would do if he were the first to see a fire in a movie house, he said, "Jump up and try to put it out." Besides exhibiting impairment of judgement, his thinking is also overly concrete. For example when asked what the following proverb means: "People who live in glass houses shouldn't throw stones," he stated "If someone throws it, the glass will break." He does not know who the first President of the United States was or who the President was who freed the slaves. He claims to have served in the U.S. Air Force "for an short time." and alleges to have received

EXHIBIT A

an honorable discharge. The patient believes he is a good father because he gives his childrens material things.

With regards to the plea which the patient took he says "My lawyer knew what was going on and he advised me." "He told me to forget about the "narcotics charge and cop out to the gun charge." In view of this, he does not understand why he was sentenced on the narcotics charge.

When asked why he gave away his right to a trial he states "because I trusted my lawyer." It should be noted that the patient also has a history of giving away considerable portions of his assets to help people whom he trusted and liked.

The picture presented is one of a man who clinically is suffering from a moderate degree of mental retardation.

He is barely literate, very suggestable and childlike in his responses to people whom he trust and likes.

Psychological test should be performed to determine the patient's intelligence quotient.

Very truly yours,

Stanley L. Fortnow M.D. F.A.P.A.
Chief Forensic Psychiatry
Bellevue Hospital Center

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

MAY 28 1975

DEPT.
NEW YORK

UNITED STATES OF AMERICA ex rel.
ROOSEVELT C. BENTLEY,

Petitioner,

-against-

HON. R.J. HENDERSON, Superintendent,
Auburn Correctional Facility,

Respondent.

AFFIDAVIT IN
SUPPORT OF
RESPONDENT

73 Civ. 1801
(C.B.M.)



STATE OF NEW YORK)
: SS.:
COUNTY OF WESTCHESTER)

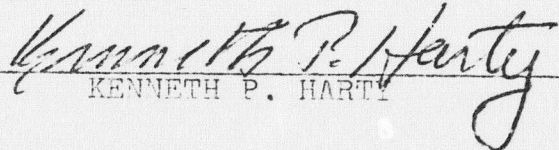
KENNETH P. HARTY, being duly sworn, deposes and says:

1. I am a Trained Psychologist, having obtained a Masters in Psychology from Ohio University in 1957 and having subsequently completed 1/2 year of course work toward my Phd. Since 1960 I have been employed as a psychologist by Ossining Correctional Facility in Ossining, N.Y. I make this affidavit on personal knowledge based on the results of intelligence tests given to petitioner at Ossining Correctional Facility on June 29, 1970. Petitioner had arrived at Ossining on June 19, 1970.

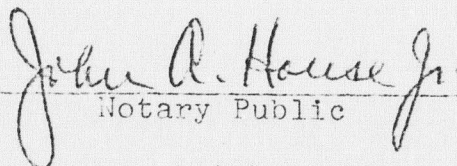
2. The intelligence tests utilized with regard to Bentley were developed and validated by Psychological Corporation, a well-known, national testing company. The tests indicated that Bentley had a composite intelligence quotient of 74, consisting of a verbal component of 71 and a non verbal component of 8 (78).

Since Bentley's score falls between 70 and 79, his intelligence rating is borderline defective. This is a category indicating a level of intellectual functional above that of a retarded person (score of 69 or under).

3. Bentley's IQ score indicates he is capable of understanding legal proceedings against him, if explained in the simplest, most concrete terms. This conclusion is also supported by the fact that petitioner has completed ten grades of school, (see Exhibit 1). If Bentley's level of intelligence functioning were in the retarded range, he could not have progress^e/this far.


KENNETH P. HART

Sworn to before me this 27th
day of May, 1975


Notary Public

JOHN A. HOUSE, Jr.
Notary Public, State of New York
No. 4504822
Qualified in Sullivan County
~~Certified in Sullivan County~~
Commission Expires March 30, 1977

CERTIFICATE OF SERVICE

June 8, 19 76

I certify that a copy of this brief and appendix
has been mailed to the Attorney General of the State
of New York.

Richard F. Gittel